

DIRECTING THE SECRETARY OF STATE TO TRANSMIT TO THE
HOUSE OF REPRESENTATIVES COPIES OF ANY DOCUMENT,
RECORD, MEMO, CORRESPONDENCE, OR OTHER COMMUNICA-
TION OF THE DEPARTMENT OF STATE, OR ANY PORTION
OF SUCH COMMUNICATION, THAT REFERS OR RELATES TO
ANY CONSULTATION WITH CONGRESS REGARDING OPER-
ATION ODYSSEY DAWN OR MILITARY ACTIONS IN OR
AGAINST LIBYA

MARKUP

BEFORE THE

COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

H. Res. 209

MAY 11, 2011

Serial No. 112-39

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DIRECTING THE SECRETARY OF STATE TO TRANSMIT TO THE HOUSE OF REPRESENTATIVES COPIES OF ANY DOCUMENT, RECORD, MEMO, CORRESPONDENCE, OR OTHER COMMUNICATION OF THE DEPARTMENT OF STATE, OR ANY PORTION OF SUCH COMMUNICATION, THAT REFERS OR RELATES TO ANY CONSULTATION WITH CONGRESS REGARDING OPERATION ODYSSEY DAWN OR MILITARY ACTIONS IN OR AGAINST LIBYA

WEDNESDAY, MAY 11, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 4:40 p.m., in room 2172, Rayburn House Office Building, Hon. Ileana Ros-Lehtinen (chairman of the committee) presiding.

Chairman ROS-LEHTINEN. The committee will come to order.

I am pleased to convene this markup meeting of the Committee on Foreign Affairs to address a privileged resolution of inquiry that requires prompt committee action.

Pursuant to notice, for purposes of a markup, I call up the resolution, House Resolution 209, which directs the Secretary of State to transmit to the House of Representatives certain documentation relating to consultation with Congress regarding military actions in or against Libya.

Without objection, the resolution will be considered as read and open for amendment at any point and the amendment in the nature of a substitute that members have before them, which also was provided previously to your offices, will be considered as read and as base text for purposes of amendment.

[H. Res. 209 follows:]

112TH CONGRESS
1ST SESSION

H. RES. 209

Directing the Secretary of State to transmit to the House of Representatives copies of any document, record, memo, correspondence, or other communication of the Department of State, or any portion of such communication, that refers or relates to any consultation with Congress regarding Operation Odyssey Dawn or military actions in or against Libya.

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 2011

Mr. COLE (for himself, Mr. KLINE, Mr. TERRY, and Mr. MCCLINTOCK) submitted the following resolution; which was referred to the Committee on Foreign Affairs

RESOLUTION

Directing the Secretary of State to transmit to the House of Representatives copies of any document, record, memo, correspondence, or other communication of the Department of State, or any portion of such communication, that refers or relates to any consultation with Congress regarding Operation Odyssey Dawn or military actions in or against Libya.

1 *Resolved*, That the House of Representatives directs
2 the Secretary of State to transmit to the House of Rep-
3 resentatives, not later than 14 days after the date of the
4 adoption of this resolution, copies of any document,

1 record, memo, correspondence, or other communication of
2 the Department of State, or any portion of such commu-
3 nication, including telephone records, electronic commu-
4 nications, email, logs and calendars, and the records of
5 internal discussions in the possession of the Secretary, or
6 any office that reports to the Secretary of State, that was
7 created on or after February 15, 2011, and refers or re-
8 lates to any of the following:

9 (1) Consultation or communication with Con-
10 gress regarding the employment or deployment of
11 the Armed Forces for Operation Odyssey Dawn or
12 military actions in or against Libya.

13 (2) The War Powers Act of 1973 and Oper-
14 ation Odyssey Dawn or military actions in or against
15 Libya.

[The amendment in the nature of a substitute follows:]

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H. RES. 209
OFFERED BY MS. ROS-LEHTINEN OF FLORIDA**

Strike all after the resolving clause and insert the following:

1 That the House of Representatives directs the Sec-
2 retary of State to transmit to the House of Representa-
3 tives, not later than 14 days after the date of the adoption
4 of this resolution, copies of any official document, record,
5 memo, correspondence, or other communication of the De-
6 partment of State in the possession of the Secretary of
7 State that was created on or after February 15, 2011,
8 and refers or relates to any of the following:

9 (1) Consultation or communication with Con-
10 gress regarding the employment or deployment of
11 the United States Armed Forces for Operation Od-
12 yssey Dawn or NATO Operation Unified Protector.

13 (2) The War Powers Resolution and Operation
14 Odyssey Dawn or Operation Unified Protector.

Amend the title so as to read: “A resolution direct-
ing the Secretary of State to transmit to the House of
Representatives copies of any official document, record,
memo, correspondence, or other communication of the

Department of State in the possession of the Secretary of State that refers or relates to any consultation with Congress regarding Operation Odyssey Dawn or NATO Operation Unified Protector.”.



Chairman ROS-LEHTINEN. Without objection, to help us economize on time this afternoon and avoid being interrupted by votes on the floor, committee members wishing to submit prepared statements for the markup record are given 5 additional calendar days to do so.

Before turning to the ranking member, I recognize myself to speak on this measure.

As mentioned before, we are meeting today to mark up House Resolution 209, a privileged motion of inquiry seeking from the State Department certain information relating to their notification of and consultation with Congress regarding the recent U.S. military intervention in Libya. Resolutions of inquiry require our committee to act within 14 legislative days in order to maintain our legislative prerogatives.

Late last week, the House Parliamentarian notified us that, due to unanticipated days of pro forma session, their original May 23rd deadline filing estimate had suddenly moved to this Friday, May 13th. Resolutions of inquiry do not create any enforceable legal obligations and, therefore, do not provide clear legal advantages over the oversight tools available to this committee.

The text we are considering today incorporates minor changes that were worked out with the resolution author and were also included in a bipartisan amendment that the House Armed Services Committee adopted earlier today when it considered a substantially identical resolution of inquiry directed to the Department of Defense.

In addition to identifying U.S. operations in Libya with greater specificity, the amended language focuses the request to “any official document, record, memo, correspondence, and other communication of the Department of State.”

In light of the already robust committee oversight of developments in Libya and U.S.-Libya policy, it is unclear how this resolution would add to congressional understanding of these issues. The full range of legal issues regarding U.S. involvement in Libya, along with policy questions about U.S. objectives in Libya, have been and will continue to be a subject of inquiry and oversight by this committee.

Nearly 2 years in advance of these developments, the committee had placed holds on proposed armored personnel carrier sales to the Qadhafi regime. Our tough questions helped to quash these

sales, and we can be proud that our oversight prevented Qadhafi from using that American technology in his murderous campaign against Libyan civilians.

A year and a half ago, committee objections prompted the Obama administration to back away from a proposal to give hundreds of thousands of dollars to Qadhafi-run foundations. Since the dramatic developments inside Libya began this spring, our committee's oversight has included six hearings, including our full committee hearing with Deputy Secretary of State Steinberg within days of the congressional notification of U.S. air strikes, a House-wide classified Members briefing originally requested by our committee, a Members ambassadorial roundtable, more than 10 weekly inter-agency staff briefings, and 3 classified staff briefings.

I am disappointed that today's floor votes forced the postponement of today's scheduled House-wide briefing on war-powers issues relating to Libya, but we will reschedule that as soon as we are able.

The committee also has been conducting exacting due diligence regarding the administration's pre-notifications, notifications, and requests for humanitarian and non-lethal defense assistance, and proposals for using frozen Qadhafi regime assets. We have been in active consultation with the executive branch and, when necessary, placing informational holds until we receive sufficient specificity about proposed assistance and recipients from State and other agencies. We want accountability down to the last bandage, and, so far, we are receiving it.

Looking ahead, we will continue to explore other key questions about our Libya involvement, such as: Whom are we helping exactly in Libya? Who are these armed rebels? And who are the Interim Transitional National Council members? What safeguards and criteria are we using to ensure that U.S. assistance serves U.S. national interests?

I want to assure our members that we will be pursuing these and other issues with the same vigor that we have been conducting our Libya oversight to date.

I want to thank the ranking member and his staff for their cooperation in making today's prompt committee action possible.

I now recognize the ranking member, Mr. Berman, for any remarks he may have on this measure.

Mr. BERMAN. Well, thank you, Madam Chairman.

And I share your sense that the President should consult fully with Congress prior to the use of military force. This committee's most important function is to review the use of military force abroad.

Although I would have welcomed further congressional consultation prior to military operations in Libya, I believe the urgency of the situation required immediate action. As many advocates observed, preventing a humanitarian catastrophe in Libya was critical—or perhaps I should say, an even greater humanitarian catastrophe in Libya was critical.

I support the amendment proposed by the chairman, and I appreciate her efforts to limit the scope of this resolution of inquiry.

The underlying resolution seems more calculated to force an unprecedented disgorging of administration documents than a

thoughtful examination of congressional prerogative in authorizing use of force. There are certainly several outstanding questions regarding the War Powers Resolution in the Libya context, but this resolution is the wrong way to examine those issues. I appreciate the chairman's efforts to address its shortcomings.

On a related note, I note the fact that the Armed Services Committee will mark up two provisions today related to the 2001 authorization for the use of military force. One provision will expand the authorization for the use of military force, while the other will authorize the Secretary of Defense to undertake cyber warfare pursuant to the AUMF of 2001.

Both of these provisions represent important efforts to clarify the President's authority to use force. They also fall squarely within the four corners of this committee's jurisdiction, and for good reason: The Foreign Affairs Committee is the best positioned to evaluate the foreign-policy bases and, ultimately, the implications of the use of force.

The authorizations proposed, although characterized as reaffirmations, pose numerous questions. For example, the cyber provision would give the President authority to conduct cyber attack missions under the 2000 AUMF. Are these offensive missions or just defensive ones? A cyber attack mission could be construed by a state being attacked as an act of war, which could result in a hot conflict. There is a fine line, given the evolving capabilities of cyber technologies, which argue for caution in our approach.

I look forward to working with the chairman and with Chairman McKeon of the Armed Services Committee and Ranking Member Smith to ensure these provisions adequately incorporate the concerns of this committee. And I intend to support the amendment in the nature of a substitute and final passage of it.

I yield back the balance of my time.

Chairman ROS-LEHTINEN. Thank you, Mr. Berman.

Are there any other members seeking recognition on this measure?

Mr. ROHRABACHER. Yes, Madam Chair.

Chairman ROS-LEHTINEN. Mr. Rohrabacher is recognized for 5 minutes.

Mr. ROHRABACHER. Thank you very much, Madam Chairwoman. And let me just note that I appreciate your leadership on this.

When we are involved in these types of activities, we are setting precedent that is important for what we are doing right now but also for what will be done in the future. And so we always have to be aware of that and watch out for the prerogatives of the legislative branch, but also, having served in the executive branch, supportive of the prerogatives of the executive branch along with us. This is not just a fight over jurisdiction between the legislative and the executive branch, but it, instead, is a constitutionally definable action that is being taken by us as patriots trying to do what is right for our country.

So I appreciate your leadership in this.

Let me just note this resolution is about asking about trying to determine who these insurgents are that we are helping down in Benghazi and who are fighting the Qadhafi dictatorship.

Let me just note, at my office tomorrow between 3 o'clock and 4 o'clock, the interim prime minister of the rebels will be there and be willing to talk to anybody. His name is Mahmoud Jibril, who is the interim prime minister for the democratic movement in Benghazi, and would be willing to answer any questions that we would have if we would like to ask him directly, rather than trying to talk through the administration.

So thank you very much. And everyone would be invited tomorrow to my office, 3 o'clock to 4 o'clock.

Chairman ROS-LEHTINEN. Thank you, Mr. Rohrabacher.

Any other members wish to be heard?

Mr. Sherman is recognized for up to 5 minutes.

Mr. SHERMAN. The executive branch often likes to turn Congress into a mere advisory body: Brief us, consult with us, ignore anything we have to say, and not acknowledge the idea that it might involve a vote of Congress to engage in a particular foreign policy adventure. Sometimes this is more comfortable for us, because we avoid then having to vote on what is a close call. And Libya is, indeed, at least for me, a close call.

But our efforts to bring democracy to Libya should not involve shredding the U.S. Constitution or the War Powers Resolution or War Powers Act, which is the law of the land.

Hostilities began on March 19th. Within 48 hours, the President filed a report. That means he has until May 21st to have a resolution of approval from Congress or, assuming our laws mean anything, he is supposed to begin a prompt withdrawal to take less than 30 days.

So far, the President has not asked for authorization, nor has any Member of Congress submitted a resolution of disapproval. We ought to be exercising our responsibilities, even if it is difficult to do so.

I, for one, am worried about two things. First, as Mr. Rohrabacher points out, who are we helping? For example, why is Mr. al-Hasidi one of the rebel commanders when he boasts of taking actions that no doubt killed Americans in both Iraq and Afghanistan? The second issue is, why are we being told that this involvement costs less than \$1 billion, which is clearly false? And why are we not using some of the seized Qadhafi assets to pay our costs?

I am sure other members have other questions. But the big question is, do any of our questions matter at all? If the War Powers Act can be ignored, if the Congress is not necessary to conduct military actions for longer than 60 days, what role do we play?

A number of us, but all too few of us, signed a letter to congressional bipartisan leadership, urging that the continuing resolution contain a provision stating that no funds provided could be spent for operations in violation of the war powers—what I call the War Powers Act, what is officially called the War Powers Resolution. It is a public law of this country. Unfortunately, that provision wasn't included.

And so, in all likelihood, as we are back in our districts talking to schoolchildren about the majesty of our democracy, the President will carry on military operations in violation of the War Powers Act and no one in Congress will be doing anything to say that the law should be complied with.

So this resolution before us today is the tiniest of steps that we could take to indicate that maybe Congress should be involved, at least in being able to look at some of the documents.

But our real role under the law and the Constitution is to stand up and vote one way or the other. Should military operations continue for more than 60 days, or should the President be required to withdraw? And I can't say I would relish such a vote, because it would be a difficult vote for me. But that is the role we ought to be playing.

I yield back.

Chairman ROS-LEHTINEN. Mr. Poe is recognized for 5 minutes.

Mr. POE. Thank you, Madam Speaker.

No question about it, Muammar Qadhafi is a bad guy. But it concerns me whether the Constitution has been followed in this operation in Libya. It seems now the United States engages in war in the name of humanity, which makes us the ones who decide what countries we will drop bombs on and what countries we decide to give a pass, like Syria.

I am, too, concerned about the War Powers Act and whether it has been followed or not. And this proceeding we are having today, I think, is very important so we get some answers.

Once again, it is imperative that Muammar Qadhafi be dealt with, but I am not so sure the Constitution gives the United States any precedent, even through the War Powers Act, when the United States' national security is not at risk, to suddenly pick a side in a country and help call an overthrow of a bad government.

So I look forward to more dialogue on this issue. Congress needs some answers. Congress should be consulted. That is our responsibility, to make those decisions. And unilateral operation by any administration in sending U.S. military forces throughout the world, not complying with the War Powers Act, is something that is important to me and something we should be concerned about.

So, with that, I will yield back the remainder of my time.

Chairman ROS-LEHTINEN. Thank you, Judge Poe.

And seeing no further baseball signals, requests for time—oh, Mr. Payne is recognized for up to 5 minutes.

Mr. PAYNE. Just a continuing discussion, I guess it was back in the Gulf of Tonkin in 1965, the whole question of the War Powers Act. It is very interesting that the War Powers Act gets into discussion whenever somebody is on the other side of whatever our President has done.

We haven't declared war since, I guess, Pearl Harbor in the 1940s, actual declaration of war, declaring war, I guess, on December the 7th against Japan and December the 8th on Germany. So, you know, this discussion of really—and I think that it is argued on all sides what constitutes a war, what constitutes an action, what—you know, it is a lot of semantics. We prosecute wars now.

You know, it is a debate, I think, that we certainly need to keep before us. I do think certainly Congress has a very responsible position. I am not so sure that I would consider our intervention with NATO in Libya as declaring war and, therefore, we need to have a vote in Congress on the war against Libya.

So I think that I have the confidence in the Commander-in-Chief and feel that the judgment of the Secretary of Defense and the Sec-

retary of State and Vice President and people with a lot of information and a lot of knowledge. I, certainly in this instance, I think, like I said, once and for all, we ought to get the War Powers Act straight. But I have heard it argued from so many different points of view during my time in Congress.

But I think that the President waited for others to act. We were not the ones moving out there ahead of the action. And so I, therefore, certainly would oppose this resolution.

Chairman ROS-LEHTINEN. Mr. Manzullo is recognized.

Mr. MANZULLO. My question goes to the extent to which these documents will bring forth information. What we have is a situation where Congress has been ignored and deference has been paid to the African Union, the Arab League, and the United Nations. This body has not had the opportunity to vote on the intervention in Libya.

Then, about 3 weeks ago, there was an announcement that \$20 million in non-lethal aid was being given to the Libyans under the guise of humanitarian aid, but, the very next day, the drones were sent into Libya. Now, this past week, we have a high-ranking official from Libya saying that they are going to sell the \$20 million in non-lethal aid that was given and use that to buy weapons for Qadhafi and the government troops.

This is a circle that doesn't end. The longer we stay out of exercising our constitutional powers to either declare war on Libya or get the heck out, the worse it is going to get. My question is whether or not this issue of the sale of the non-lethal aid by the Egyptian Government, will that be uncovered in some of these documents? How far does the request for these documents go?

Chairman ROS-LEHTINEN. Mr. Manzullo, would you yield?

Mr. MANZULLO. Of course.

Chairman ROS-LEHTINEN. We do have a classified briefing that is going to be on Pakistan on Thursday, but I think that the folks who will be there, may be able to answer your question related to Libya, as well—

Mr. MANZULLO. Okay.

Chairman ROS-LEHTINEN [continuing]. If you would grace us with your presence.

Mr. MANZULLO. Well, usually, if it is classified, they don't say anything that you don't see the morning before in both newspapers. But if you could ask those people to give us some fresh information—

Chairman ROS-LEHTINEN. We sure will. If the gentleman would yield—

Mr. MANZULLO. This question needs to be asked. What has happened to \$20 million in taxpayers' money that was supposed to be non-lethal aid? Now Libya says they are going to sell it and use it to buy bullets with the help of Qadhafi's regime.

Maybe I am missing something, but I think the rest of the members of our committee share the same angst. My question is, when the request for documents are presented, are there inquiries saying, "Do you have any documents related to"—and then we ask the question in there? Is that how that works on the official inquiry?

Chairman ROS-LEHTINEN. If the gentleman would yield?

Mr. MANZULLO. Of course.

Chairman ROS-LEHTINEN. We can provide you the information that we have on the expenditure of the funds up to date. We will be glad to give you that information, the information that we have——

Mr. MANZULLO. Okay, but——

Chairman ROS-LEHTINEN [continuing]. And we will see if that satisfies you.

Mr. MANZULLO. But I am sure you will be asking for further documents——

Chairman ROS-LEHTINEN. Absolutely, we will.

Mr. MANZULLO. Also, as to whether or not it has been re-gifted.

Chairman ROS-LEHTINEN. If the gentleman will yield, we will continue to ask——

Mr. MANZULLO. Thank you.

Chairman ROS-LEHTINEN [continuing]. And ask and ask.

Mr. MANZULLO. Thank you.

Mr. BERMAN. Not that there is anything wrong with that.

Mr. MANZULLO. I yield back.

Chairman ROS-LEHTINEN. Thank you.

Seeing no further requests for time on this measure and no further amendments, and seeing that a reporting quorum is present, I move that the measure be reported favorably to the House, as amended.

All those in favor, say, "Aye."

All opposed, "No."

The ayes have it, and the motion to report favorably is agreed to.

Without objection, the bill, as amended, will be reported as a single amendment in the nature of a substitute, and the staff is directed to make technical and conforming changes.

This concludes our business for today. And I would like to thank all of the members and their staff for their effort and cooperation to make this prompt action possible.

And a reminder that we will set up the war-powers briefing when we come back.

And, with that, the committee is adjourned.

[Whereupon, at 5:05 p.m., the committee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

FULL COMMITTEE MARK-UP NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-0128

Ileana Ros-Lehtinen (R-FL), Chairman

May 6, 2011

You are respectfully requested to attend an OPEN meeting of the Committee on Foreign Affairs, to be held in **Room 2172 of the Rayburn House Office Building (and available live, via the WEBCAST link on the Committee website at <http://www.hfca.house.gov>)**:

DATE: Wednesday, May 11, 2011

TIME: 4:30 p.m.

MARK-UP OF: H. Res. 209: Resolution of Inquiry

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS
MINUTES OF FULL COMMITTEE MARKUP

Day Wednesday Date May 11, 2011 Room 2172 Rayburn

Starting Time 4:40 pm Ending Time 5:04 pm

Recesses ☐ (____ to ____) (____ to ____) (____ to ____) (____ to ____) (____ to ____) (____ to ____)

Presiding Member(s)

Chairman Ros-Lehtinen

Check all of the following that apply:

Open Session ☒

Executive (closed) Session ☐

Televised ☒

Electronically Recorded (taped) ☒

Stenographic Record ☒

BILLS FOR MARKUP: (Include bill number(s) and title(s) of legislation.)

H.Res. 209: Resolution of Inquiry

COMMITTEE MEMBERS PRESENT:

Attendance Attached

NON-COMMITTEE MEMBERS PRESENT:

STATEMENTS FOR THE RECORD: (List any statements submitted for the record.)

Connolly SFR

ACTIONS TAKEN DURING THE MARKUP: (Attach copies of legislation and amendments.)

RECORDED VOTES TAKEN (FOR MARKUP): (Attach final vote tally sheet listing each member.)

<u>Subject</u>	<u>Yeas</u>	<u>Nays</u>	<u>Present</u>	<u>Not Voting</u>
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TIME SCHEDULED TO RECONVENE _____

or

TIME ADJOURNED 5:04 pm


Doug Anderson, General Counsel

Hearing/Briefing Title: **Markup of H.Res. 209**

Date: **May 11, 2011**

Present	Member
X	Ileana Ros-Lehtinen, FL
	Christopher Smith, NJ
X	Dan Burton, IN
X	Elton Gallegly, CA
X	Dana Rohrabacher, CA
X	Donald Manzullo, IL
	Edward R. Royce, CA
	Steve Chabot, OH
	Ron Paul, TX
	Mike Pence, IN
	Joe Wilson, SC
X	Connie Mack, FL
X	Jeff Fortenberry, NE
X	Michael McCaul, TX
X	Ted Poe, TX
X	Gus M. Bilirakis, FL
X	Jean Schmidt, OH
X	Bill Johnson, OH
X	David Rivera, FL
X	Mike Kelly, PA
	Tim Griffin, AK
X	Tom Marino, PA
X	Jeff Duncan, SC
	Ann Marie Buerkle, NY
	Renee Ellmers, NC

Present	Member
X	Howard L. Berman, CA
	Gary L. Ackerman, NY
	Eni F.H. Faleomavaega, AS
X	Donald M. Payne, NJ
X	Brad Sherman, CA
	Eliot Engel, NY
X	Gregory Meeks, NY
	Russ Carnahan, MO
X	Albio Sires, NJ
X	Gerry Connolly, VA
X	Ted Deutch, FL
	Dennis Cardoza, CA
X	Ben Chandler, KY
X	Brian Higgins, NY
X	Allyson Schwartz, PA
X	Chris Murphy, CT
X	Frederica Wilson, FL
X	Karen Bass, CA
	William Keating, MA
	David Cicilline, RI

The Honorable Gerald E. Connolly (VA-11)

HCFA Meeting: H. Res. 209: Resolution of Inquiry
Wednesday, May 11, 2011
4:30pm

The introduction of House Resolution 209 on April 7th began a 15 legislative day “countdown clock” during which, if the Resolution is not reported out by this Committee, H. Res. 209 could be brought up for Floor consideration as a privileged resolution. H. Res. 209 directs the Secretary of State to transmit to the House of Representatives any documents relating to consultation with Congress regarding Operation Odyssey Dawn or military actions in or against Libya. The driving statute behind H. Res. 209 is of course The War Powers Resolution. The Constitution states that Congress has the power to declare war, and the President is Commander-in-Chief. Taken with the War Powers Resolution, there is significant debate about the role of the President and Congress.

I was and still am a supporter of the no-fly zone in Libya, which was established by a multilateral and international legal framework. Nevertheless, it is important to examine Operation Odyssey Dawn within the confines of Congress’ constitutional powers and the WPR. On March 21, the President sent a letter to the Speaker of the House and the Speaker Pro Tempore of the Senate outlining a “limited and well-defined mission in support of international efforts” to protect citizens in Libya. The President went on to say that “these actions...[were] pursuant to [his] constitutional authority to conduct U.S. foreign relations and as Commander in Chief and Chief Executive.”

According to the House report regarding the WPR, “consultation...means that a decision is pending on a problem and that Members of Congress are being asked by the President for their advice and opinions and, in appropriate circumstances, their approval of action contemplated.” This report language makes the intention of the WPR clear—consultation ought to be active, not merely informative. In the WPR, the term “hostilities” was used instead of “armed conflict” precisely because of the former phrase’s broader nature. The Constitution and the WPR are clear—Congress ought to have a role with regard to U.S. forces. The extent of that role has been the subject of debate as old as the United States.

The nuances of this constitutional debate ought not to muddy the waters—Congress has an active, not passive, role with regard to war. The authority of the legislative branch to declare war is printed as clear as day in the Constitution. Any affront to this authority would be a violation of a concept we hold so dear—checks and balances. Absent this mechanism, we risk devolving into a tyrannical government that our nation’s founders so feared.

5/11/11 Foreign Affairs Committee Markup Summary

H.Res. 209 (Cole), "Directing the Secretary of State to transmit to the House of Representatives copies of any document, record, memo, correspondence, or other communication of the Department of State, or any portion of such communication, that refers or relates to any consultation with Congress regarding Operation Odyssey Dawn or military actions in or against Libya"

The Chair called up the resolution

- 1) an amendment in the nature of a substitute was offered by Chairman Ros-Lehtinen, and by unanimous consent was considered as the base text.

The Ros-Lehtinen substitute amendment was agreed to by a voice vote.

H.Res. 209 was favorably reported to the House, as amended, by voice vote.

The Committee adjourned.

